

RIGHT-OF-ENTRY AGREEMENT

THIS AGREEMENT, executed on the respective dates indicated below, is effective as of _____, between the CITY AND COUNTY OF HONOLULU, Hawaii (hereinafter referred to as the "CITY"), by its Director of the Department of Transportation Services, and the DEPARTMENT OF EDUCATION, State of Hawaii, (hereinafter referred to as the "STATE") by its Superintendent.

WITNESSETH THAT:

WHEREAS, the CITY requires a temporary right-of-entry onto property owned by the STATE located at TMK: 9-4-008: 20 & 25, situated in Waipahu, Honolulu, (hereinafter referred to as the "Property"), for a transit project known as the Honolulu High-Capacity Transit Corridor Project (hereinafter referred to as the "Project"), attached hereto as shown on Exhibit "A", and incorporated herein by reference. The temporary right-of-entry is required for the public purpose of conducting preliminary data gathering on the land identified in the attached Exhibit "A".

WHEREAS, the CITY is desirous of obtaining immediate entry onto the area shown on Exhibit "A" for preliminary data gathering (archeological, soil testing, topographic surveys, etc.); and

WHEREAS, the STATE is desirous of cooperating with the CITY, and

NOW, THEREFORE, in consideration of the promises contained herein, the CITY and STATE agree as follows:

1. Grant of Entry. The STATE hereby grants to the CITY, its officers, employees and consultants, permission to enter upon a portion of the Property indicated on Exhibit "A", for the purpose of preliminary data gathering. The CITY shall notify the STATE in writing, at FAX No. (808) 377-8300, at least forty-eight (48) hours prior to the initial entry onto the Property.

2. CITY responsibility. In relation to the CITY's use of the Property and work on the Property, the CITY shall be responsible for damages or injury caused by the CITY's agents, officers, employees and consultants in the course of their employment or entry into the Property to the extent that the CITY's liability for such damage or injury has been determined by a court or otherwise agreed to by the CITY, and the CITY shall pay for such damage and injury to the

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extent permitted by law.

3. Insurance. The CITY shall require its consultants for the Project to purchase and maintain at their expense, the following insurance, naming the STATE as an additional insured, for the term of the Right-of-Entry Agreement:

a. CGL Policy. Comprehensive General Liability Insurance, including automobile accident liability, contingent liability, contractual liability, and products on STATE's Property with a combined minimum single limit of One Million Dollars (\$1,000,000) per occurrence for bodily injury, personal injury, and property damage. If the policy is written on a "claims made" form, it shall provide for an extended reporting period of not less than three (3) years.

b. Workers' Compensation. Workers' Compensation Insurance as required by applicable law.

c. Employers' Liability Coverage. Employers' Liability Insurance with limits of liability no less than the minimum single limit of One Hundred Thousand Dollars (\$100,000).

4. Insurance; other requirements. The aforesaid insurance policies (except for the Workers' Compensation Policy) shall name the STATE as an additional insured.

5. No unreasonable interference. The CITY agrees not to unreasonably interfere with the STATE's facilities, operations and activities. The agreement of no interference includes the activities of the CITY's consultants, in, on, or connected with the Property.

6. Term. The term of this Agreement shall be twelve (12) months from the effective date of this Agreement or upon transfer of title to the CITY, whichever occurs earlier, unless sooner terminated by either party upon written notice supplied to the other party, at least thirty (30) days in advance.

7. Heading, captions. The headings and captions used herein are for convenience of reference only and are not to be used to construe, interpret, define, or limit the paragraphs to which they may pertain.

8. Binding effect. The term "STATE" wherever used herein shall include the State of Hawaii, its successors and assigns. The term "CITY" wherever used herein shall include the CITY AND COUNTY OF HONOLULU, its consultants and permitted assigns. This instrument shall be binding upon and shall inure to the benefit of the STATE and the CITY.

9. Assignment. The CITY may not assign or otherwise transfer, any interest in this Right-of-Entry Agreement without the written consent of the STATE.

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10. Amendment. This Agreement shall not be amended except in writing signed by the parties.

IN WITNESS WHEREOF, the parties execute this Agreement by their signatures, on the dates below, to be effective as of the date first above written.

CITY AND COUNTY OF HONOLULU

By _____
Wayne Y. Yoshioka
Director, Department of Transportation

Services

Date _____

STATE OF HAWAII

By _____
Patricia Hamamoto
Superintendent, Department of Education

Date _____

APPROVED AS TO FORM
AND LEGALITY

Deputy Corporation Counsel

Date _____

APPROVED AS TO FORM:

Deputy Attorney General

Date _____

July 1, 2008